

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

***Return Date: May 23, 2019***

***Time: 9:30 a.m.***

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In re:

CAROL ROSE NELSON

Chapter 13

Case No.: 19-71867-736

Debtor(s)

**NOTICE OF MOTION**

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SIRS / MADAMS

**PLEASE TAKE NOTICE**, that MICHAEL J. MACCO, Chapter 13 Trustee of the above captioned estate, will move before the Honorable Robert E. Grossman, United States Bankruptcy Judge on the 23rd day of MAY, 2019 at 9:30 a.m., at the United States Bankruptcy Court located at the Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza – Courtroom 860, Central Islip, New York 11722, for an Order pursuant to 11 U.S.C. §§§§ 109(g), 521, & 1307(c), dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under Chapter 13 or converting a Chapter 7 to Chapter 13 for a period of one hundred eighty (180) days, by reason of the debtor(s)' failure to submit monthly pre-confirmation payments, failure to provide and/or file documents, failure to be examined at §341 meeting of creditors, and for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that answering papers, if any, shall be filed with the Court and served upon the undersigned no later than three (3) days prior to the return date of this motion.

Dated: Islandia, New York

April 23, 2019

Yours, etc.

MICHAEL J. MACCO

Chapter 13 Trustee

2950 Express Drive South, Suite 109

Islandia, New York 11749

(631) 549-7900

To: *Office of the United States Trustee*  
*CAROL ROSE NELSON, Pro-Se Debtor(s)*  
*All Interested Parties and Creditors*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

CAROL ROSE NELSON

**tmm1634**

Chapter 13  
Case No.: 19-71867-736

Debtor(s)

**APPLICATION**

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TO THE HONORABLE ROBERT E. GROSSMAN, UNITED STATES BANKRUPTCY JUDGE:

MICHAEL J. MACCO, Chapter 13 Trustee in the above captioned estate, respectfully represents as follows:

1. The debtor(s) filed a Chapter 13 petition under the provisions of 11 U.S.C., on March 15, 2019, and thereafter MICHAEL J. MACCO was duly appointed and has qualified as Trustee.
2. Upon information and belief, this is the third petition for relief filed by the debtor(s), under Chapter 7 & 13, dating back to August 15, 2016.
3. The first petition was filed by the debtor(s) under case number 8-16-73688-736, on August 15, 2016. The debtors' Chapter 7 case was discharged on November 23, 2016. The second petition filed by the debtor(s) was filed under case number 8-18-71576-736, on March 9, 2018. The debtors' Chapter 13 case was dismissed upon application of the Trustee, on January 18, 2019.
4. As of the date of this motion, the debtor(s) has failed to submit any monthly pre-confirmation payments to the Trustee.
5. In addition, as of this date the debtor(s) has failed to file and/or provide to the Trustee, a Chapter 13 Plan; Statement of Financial Affairs; Statement of Current Monthly Income and Means Test; complete set of schedules; copies of pay statements from employer for sixty (60) day period preceding filing; personal state and federal Tax Returns for 2018; and a written appraisal for property, within the fifteen (15) day period required under the Bankruptcy Code.
6. Furthermore, as of this date the debtor has failed to provide the Trustee with all filings required under Section 521; and all mandatory disclosure documentation as set forth in Local Bankruptcy Rule 2003-1.
7. Moreover, the debtor failed to be examined at the initial §341 meeting of creditors, held on April 22, 2019 at 11:00 a.m.
8. This appears to be nothing more than another filing for the sole purpose of obtaining the rights and benefits of the Automatic Stay, as provided in 11 U.S.C. §362.
9. This is a material default and is prejudicial to the rights of the creditors of the debtor(s).

**WHEREFORE**, the Trustee requests an Order pursuant to the provisions of 11 U.S.C. §§§ 109(g), 521, & 1307(c), dismissing this case with prejudice, prohibiting the debtor(s) from filing another petition under Chapter 13 or converting a Chapter 7 to Chapter 13 for a period of one hundred eighty (180) days, and for such other and further relief as this Court deems just and proper.

Dated: Islandia, New York  
April 23, 2019

/s/ **Michael J. Macco**

Michael J. Macco, Chapter 13 Trustee  
2950 Express Drive South, Suite 109  
Islandia, New York 11749  
(631) 549-7900

STATE OF NEW YORK     )  
COUNTY OF SUFFOLK    )     ss.:

STEPHANIE TURNER, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age, and resides in Suffolk County, New York.

On April 23, 2019 deponent served the within:

**NOTICE OF MOTION AND APPLICATION**

upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of same, enclosed in a post-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

*Carol Rose Nelson*  
380 Ocean Ave  
Malverne, NY 11565  
*Pro Se Debtor(s)*

*Rushmore Loan Management Services, LLC*  
c/o Gross Polowy, LLC  
1775 Wehrle Drive, Suite 100  
Williamsville, NY 14221

and upon the following parties, by the e-mail address designated by said parties for that purpose;

*Office of the United States Trustee*  
*Alfonse M. D'Amato U.S. Courthouse*  
[USTPRegion02.LI.ECF@usdoj.gov](mailto:USTPRegion02.LI.ECF@usdoj.gov)

*/s/Stephanie Turner*  
STEPHANIE TURNER

Sworn to before me this  
23<sup>rd</sup> day of APRIL, 2019

*/s/ Loni Bragin*  
NOTARY PUBLIC  
Loni Bragin  
Notary Public, State of New York  
No. 01BR6172194  
Qualified in Suffolk County  
Commission Expires August 6, 2019